

**ASSEMBLY BILL**

**No. 2572**

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**Introduced by Assembly Member Bradford**

February 19, 2010

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An act to amend Sections 5360, 5371.1, 5373.1, 5374, 5378, 5378.6, 5379, and 5411.5 of, and to repeal Section 5376 of, the Public Utilities Code, relating to charter-party carriers of passengers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2572, as introduced, Bradford. Charter-party carriers of passengers.

The California Constitution establishes the Public Utilities Commission with jurisdiction over all public utilities, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities. Charter-party carriers of passengers, as defined, are subject to the jurisdiction and control of the commission under the Passenger Charter-Party Carriers' Act. The act defines a charter-party carrier of passengers, subject to certain exceptions, to mean every person that is engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway.

This bill would provide that a charter-party carrier of passengers includes any person, corporation, or other entity engaged in the provision of either a hired driver service or a rented motor vehicle that is being operated by a hired driver.

The act requires a charter-party carrier of passengers to obtain from the commission a certificate of public convenience and necessity, or

for certain carriers, to obtain a permit, sets forth the requirements to be met before a certificate or permit may be issued or renewed, establishes fees to be charged by the commission to different classes of certificate holders and for permit holders for issuance of a certificate or permit, and provides that a certificate or permit, or renewal thereof, is effective for 3 years, unless suspended or revoked by the commission.

This bill would delete the provision that a certificate or permit, or renewal thereof, is effective for 3 years and would make conforming changes to delete references in the act to the renewal of certificates or permits. The bill would authorize the commission to cancel, revoke, or suspend any operating certificate or permit upon the failure of a certificate or permit holder, or of any of its employees, to follow any order, decision, rule, regulation, direction, demand, ordinance, or other requirements established by the governing body of an airport. The bill would raise the fees charged for issuance of class B certificates, class C certificates, and permits from \$500 to \$700.

Existing law authorizes a peace officer, as defined, that arrests a person for operating a charter-party carrier of passengers without a valid certificate or permit to impound and retain possession of the vehicle, subject to certain exceptions and provisions for notice and return of the vehicle. Existing law limits this authority to arrests made at a public airport or within 2 miles of the international border with Mexico.

This bill would delete that limitation.

Existing law requires that an impounded vehicle be immediately returned to the owner, without cost to the owner, if the infraction or violation is not prosecuted or is dismissed, or used in violation of a specified law without the knowledge and consent of the owner.

This bill would delete the requirement that the impounded vehicle be returned without cost to the owner. The bill would require that if a vehicle is seized due to a violation of a person other than the owner, the impounded vehicle be returned to the owner after all impoundment fees are paid.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 5360 of the Public Utilities Code is  
2     amended to read:

1 5360. Subject to the exclusions of Section 5353, “charter-party  
2 carrier of passengers” means every person engaged in the  
3 transportation of persons by motor vehicle for compensation,  
4 whether in common or contract carriage, over any public highway  
5 in this state. *“Charter-party carrier of passengers” includes any*  
6 *person, corporation, or other entity engaged in the provision of*  
7 *either a hired driver service or a rented motor vehicle when a*  
8 *rented motor vehicle is being operated by a hired driver.*

9 SEC. 2. Section 5371.1 of the Public Utilities Code is amended  
10 to read:

11 5371.1. (a) No charter-party carrier of passengers issued a  
12 class A certificate subject to this section shall be restricted as to  
13 point of origin or destination in the State of California.

14 (b) Every application for a certificate or permit, ~~or renewal~~  
15 ~~thereof~~, shall be accompanied by the appropriate fee as specified  
16 in Section 5373.1.

17 SEC. 3. Section 5373.1 of the Public Utilities Code is amended  
18 to read:

19 5373.1. (a) Each application for a charter-party carrier of  
20 passengers certificate or permit shall be accompanied by a filing  
21 fee as follows:

22 (1) Class A certificates ~~(new)~~: one thousand five hundred dollars  
23 (\$1,500).

24 ~~(2) Class A certificates (renewal): five hundred dollars (\$500).~~

25 ~~(3)~~

26 (2) Class B certificates ~~(new and renewal): five:~~ *seven* hundred  
27 dollars ~~(\$500)~~ (\$700).

28 ~~(4)~~

29 (3) Class C certificates ~~(new and renewal): five:~~ *seven* hundred  
30 dollars ~~(\$500)~~ (\$700).

31 ~~(5)~~

32 (4) Permits ~~(new and renewal): five:~~ *seven* hundred dollars  
33 ~~(\$500)~~ (\$700).

34 (b) The commission shall also require each application to be  
35 accompanied by a fee to offset the cost of the charter-party carrier  
36 bus terminal inspections conducted by the Department of the  
37 California Highway Patrol. The fee shall be fifteen dollars (\$15)  
38 per tour bus, as defined in Section 612 of the Vehicle Code, or a  
39 maximum of six thousand five hundred dollars (\$6,500) for each  
40 operating carrier.

(c) The commission shall require each charter-party carrier that operates tour buses, as defined in Section 612 of the Vehicle Code, to undergo an annual bus terminal inspection conducted by the Department of the California Highway Patrol and to pay an annual fee of fifteen dollars (\$15) per tour bus, or a maximum of six thousand five hundred dollars (\$6,500), to offset the cost of the inspections.

(d) The commission shall deposit the fees collected pursuant to subdivisions (b) and (c) in the Motor Vehicle Account in the State Transportation Fund.

SEC. 4. Section 5374 of the Public Utilities Code is amended to read:

5374. (a) (1) Before a permit or certificate is issued ~~or renewed~~, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct ~~or continue to conduct~~ the proposed ~~or existing~~ transportation services. The commission shall not issue ~~or renew~~ a permit or certificate pursuant to this chapter unless the applicant meets all of the following requirements:

(A) It is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

(B) It is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subcarriers, operating vehicles in transportation for compensation under the certificate.

(C) It has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

(D) It participates in a program to regularly check the driving records of all persons, whether employees or subcarriers, operating vehicles used in transportation for compensation.

(E) It has a safety education and training program in effect for all employees or subcarriers operating vehicles used in transportation for compensation.

(F) It will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with

1 the Vehicle Code and with regulations contained in Title 13 of the  
2 California Code of Regulations relative to motor vehicle safety.

3 (G) It has filed with the commission the certificate of workers'  
4 compensation insurance coverage or statement required by Section  
5 5378.1.

6 (H) It has provided the commission an address of an office or  
7 terminal where documents supporting the factual matters specified  
8 in the showing required by this subdivision may be inspected by  
9 the commission and the Department of the California Highway  
10 Patrol.

11 (I) It provides for a mandatory controlled substance and alcohol  
12 testing certification program as adopted by the commission  
13 pursuant to Section 1032.1.

14 (2) With respect to subparagraphs (B) and (F) of paragraph (1),  
15 the commission may base a finding on a certification by the  
16 commission that an applicant has filed, with the commission, a  
17 sworn declaration of ability to comply and intent to comply.

18 (3) The commission may require, as a precondition to the  
19 issuance of a permit or certificate, the procurement of a  
20 performance bond sufficient to facilitate the collection of fines,  
21 penalties, and restitution related to enforcement actions that can  
22 be taken against the applicant.

23 (b) In addition to the requirements in subdivision (a),  
24 charter-party carriers shall meet all other state and, where  
25 applicable, federal regulations as prescribed.

26 (c) The commission may delegate to its executive director or  
27 that executive director's designee the authority to issue, renew, or  
28 authorize the transfer of, charter-party carrier permits or certificates  
29 and to make the findings specified in subdivision (a) that are  
30 necessary to that delegated authority.

31 SEC. 5. Section 5376 of the Public Utilities Code is repealed.  
32 ~~5376. A permit or certificate, or renewal thereof, is effective~~  
33 ~~for three years, unless suspended or revoked by the commission.~~

34 SEC. 6. Section 5378 of the Public Utilities Code is amended  
35 to read:

36 5378. (a) The commission may cancel, revoke, or suspend any  
37 operating permit or certificate issued pursuant to this chapter upon  
38 any of the following grounds:

39 (1) The violation of any of the provisions of this chapter, or of  
40 any operating permit or certificate issued thereunder.

1 (2) The violation of any order, decision, rule, regulation,  
2 direction, demand, or requirement established by the commission  
3 pursuant to this chapter.

4 (3) The conviction of the charter-party carrier of passengers of  
5 any misdemeanor under this chapter while holding operating  
6 authority issued by the commission or the conviction of the carrier  
7 or its officers of a felony while holding operating authority issued  
8 by the commission, limited to robbery, burglary, larceny, fraud,  
9 or intentional dishonesty for personal gain.

10 (4) The rendition of a judgment against the charter-party carrier  
11 of passengers for any penalty imposed under this chapter.

12 (5) The failure of a charter-party carrier of passengers to pay  
13 any fee imposed upon the carrier within the time required by law.

14 (6) On request of the holder of the permit or certificate.

15 (7) Failure of a permit or certificate holder to operate and  
16 perform reasonable service. That failure may include repeated  
17 violations of the Vehicle Code or of regulations contained in Title  
18 13 of the California Code of Regulations relative to motor vehicle  
19 safety, by employees of the permitholder or certificate holder, that  
20 support an inference of unsafe operation or willful neglect of the  
21 public safety by the permitholder or certificate holder.

22 (8) Consistent failure of the charter-party carrier of passengers  
23 to maintain its vehicles in a safe operating condition and in  
24 compliance with the Vehicle Code and with regulations contained  
25 in Title 13 of the California Code of Regulations relative to motor  
26 vehicle safety, as shown by the records of the commission, the  
27 Department of Motor Vehicles, the Department of the California  
28 Highway Patrol, or the carrier.

29 (9) The knowing and willful filing of a false report that  
30 understates revenues and fees.

31 *(10) Failure of a permit or certificate holder, or of any of its*  
32 *employees, to follow any order, decision, rule, regulation,*  
33 *direction, demand, ordinance, or other requirement established*  
34 *by the governing body of an airport, including solicitation*  
35 *practices.*

36 (b) The commission may levy a civil penalty of up to seven  
37 thousand five hundred dollars (\$7,500) upon the holder of an  
38 operating permit or certificate issued pursuant to this chapter, for  
39 any of the grounds specified in subdivision (a), as an alternative  
40 to canceling, revoking, or suspending the permit or certificate. The

1 commission may also levy interest upon the civil penalty, which  
2 shall be calculated as of the date on which the civil penalty is  
3 unpaid and delinquent. The commission shall deposit at least  
4 monthly all civil penalties and interest collected pursuant to this  
5 section into the General Fund.

6 SEC. 7. Section 5378.6 of the Public Utilities Code is amended  
7 to read:

8 5378.6. (a) Upon receipt of a written recommendation from  
9 the Department of the California Highway Patrol that ~~a new or~~  
10 ~~renewal~~ an application for a charter-party carrier certificate or  
11 permit be denied either (1) for failure to maintain any vehicle used  
12 in transportation for compensation in a safe operating condition  
13 or to comply with the Vehicle Code or with regulations contained  
14 in Title 13 of the California Code of Regulations relative to motor  
15 carrier safety or (2) for failure to enroll all drivers in the pull notice  
16 system as required by Section 1808.1 of the Vehicle Code, the  
17 commission shall deny the application. The department's written  
18 recommendation shall specifically indicate compliance with  
19 subdivision (b).

20 (b) Before transmitting a recommendation pursuant to  
21 subdivision (a) to the commission, the Department of the California  
22 Highway Patrol shall notify the applicant for the charter-party  
23 carrier certificate or permit of all of the following in writing:

24 (1) That the department has determined that the applicant's  
25 safety record is unsatisfactory, furnishing a copy of any  
26 documentation or summary of any other evidence supporting the  
27 determination.

28 (2) That the determination may result in a denial of the  
29 applicant's certificate or permit by the commission.

30 (3) That the applicant may request a review of the determination  
31 by the department within five days of its receipt of the notice  
32 required under this subdivision. The department shall, upon request,  
33 conduct and evaluate that review prior to transmitting any  
34 notification to the commission pursuant to subdivision (a).

35 ~~(e) Whenever the commission denies an application for renewal~~  
36 ~~pursuant to subdivision (a), the commission shall furnish the~~  
37 ~~charter-party carrier written notice of the denial and shall hold a~~  
38 ~~hearing within a reasonable time, not to exceed 21 days, after a~~  
39 ~~written request is filed with the commission, with a copy thereof~~  
40 ~~furnished to the Department of the California Highway Patrol. At~~

1 ~~the hearing, the carrier shall show cause why the denial was~~  
2 ~~improper or unwarranted. At the conclusion of the hearing, the~~  
3 ~~commission may, in addition to any other remedy provided in this~~  
4 ~~part, reverse the denial, or sustain the denial.~~

5 ~~(d)~~

6 (c) Any applicant for a charter-party carrier certificate or permit  
7 denied pursuant to subdivision (a), ~~whose denial has not been~~  
8 ~~reversed as a result of the hearing provided for in subdivision (c),~~  
9 that wishes to obtain a certificate or permit shall reapply for the  
10 desired authority.

11 SEC. 8. Section 5379 of the Public Utilities Code is amended  
12 to read:

13 5379. After the cancellation or revocation of a permit or  
14 certificate, or during the period of its suspension, ~~or after the~~  
15 ~~expiration of its permit or certificate,~~ it is unlawful for a  
16 charter-party carrier of passengers to conduct any operations as a  
17 carrier. The commission may either grant or deny an application  
18 for a new permit or certificate whenever it appears that a prior  
19 permit or certificate of the applicant has been canceled or revoked  
20 pursuant to Section 5378 or whenever it appears, after hearing,  
21 that as a prior permit or certificate holder, the applicant engaged  
22 in any of the unlawful activities set forth in Section 5378 for which  
23 his or her permit or certificate might have been canceled or  
24 revoked.

25 SEC. 9. Section 5411.5 of the Public Utilities Code is amended  
26 to read:

27 5411.5. (a) Whenever a peace officer, as defined in Chapter  
28 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal  
29 Code, arrests a person for ~~a violation of Section 5411 involving~~  
30 ~~the operation of a charter-party carrier of passengers without a~~  
31 ~~valid certificate or permit at a public airport, within 100 feet of a~~  
32 ~~public airport, or within two miles of the international border~~  
33 ~~between the United States and Mexico,~~ the peace officer may  
34 impound and retain possession of the vehicle ~~used in violation of~~  
35 ~~Section 5411.~~

36 (b) Whenever a peace officer, as defined in Chapter 4.5  
37 (commencing with Section 830) of Title 3 of Part 2 of the Penal  
38 Code, arrests a person for operating a charter-party carrier of  
39 passengers as a taxicab in violation of an ordinance or resolution



1 of a city, county, or city and county, the peace officer may impound  
2 and retain possession of the vehicle.

3 (c) If the vehicle is seized from a person who is not the owner  
4 of the vehicle, the impounding authority shall immediately give  
5 notice to the owner by first-class mail.

6 (d) The vehicle shall immediately be returned to the owner  
7 ~~without cost to the owner~~ if the infraction or violation is not  
8 prosecuted or is dismissed, the owner is found not guilty of the  
9 offense, or it is determined that the vehicle was used in violation  
10 of Section 5411 without the knowledge and consent of the owner.  
11 ~~Otherwise, the~~ *The* vehicle shall be returned to the owner upon  
12 payment of any fine ordered by the court. *If the vehicle is seized*  
13 *due to a violation of a person other than the owner of the vehicle,*  
14 *the vehicle shall be returned to the owner after all impoundment*  
15 *fees are paid.* After the expiration of six weeks from the final  
16 disposition of the criminal case, unless the owner is in the process  
17 of making payments to the court, the impounding authority may  
18 deal with the vehicle as lost or abandoned property under Section  
19 1411 of the Penal Code.

20 (e) At any time, a person may make a motion in superior court  
21 for the immediate return of the vehicle on the ground that there  
22 was no probable cause to seize it or that there is some other good  
23 cause, as determined by the court, for the return of the vehicle. A  
24 proceeding under this section is a limited civil case.

25 (f) No peace officer, however, may impound any vehicle owned  
26 or operated by a nonprofit organization exempt from taxation  
27 pursuant to Section 501(c)(3) of the Internal Revenue Code which  
28 serves youth or senior citizens and provides transportation  
29 incidental to its programs or services.